

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

OTTO CAULEY §
VS. § CIVIL ACTION NO. 1:10cv469
COMMUNITY EDUC. CENTER, ET AL. §

MEMORANDUM ORDER PARTIALLY ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Otto Cauley, an inmate confined within the Texas Department of Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil rights lawsuit pursuant to 28 U.S.C. § 1983. Plaintiff originally named Community Education Center (“CEC”) and the Newton County Correctional Center as defendants. In an amended complaint, plaintiff also named Warden Dawson, Assistant Warden Stats, Captain Samuels, Dr. Moore, Nurse Hollaway and Nurse Wright as defendants.

The court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont Texas, for consideration pursuant to applicable orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending this matter be dismissed for failure to state a claim upon which relief be granted. The magistrate judge's recommendation that the claims against CEC and the Newton County Correctional Center be dismissed was based on his conclusion that plaintiff had failed to identify any polices of these entities which led to the injuries he suffered. The magistrate judge's recommendation that the claims against the remaining defendants be dismissed was based on his conclusion that the claims against these defendants was barred by the applicable statute of limitations.

The court has received and considered the Report and Recommendation of United States Magistrate Judge. Plaintiff filed objections to the Report and Recommendation.

In his objections, plaintiff makes no reference to the recommended dismissal of the claims against CEC and the Newton County Correctional Center. With respect to the claims

against the remaining defendants, plaintiff asserts he would have filed his claims against these defendants within the applicable period of limitations if defendants Dawson, Stats and Wilson had not denied him access to a law library for more than 150 days.

After considering plaintiff's objections, the court is of the opinion that it is possible his claims against the individual defendants are not barred by the applicable statute of limitations. As the claims against the individual defendants involve events which occurred after the events listed in the original complaint, the claims against the individual defendants will be severed from this action and proceed as a separate lawsuit. This action does not constitute a ruling by the court that plaintiff's claims against the individual defendants are not barred by the applicable statute of limitations. Instead, it merely constitutes a conclusion that more factual development may be needed to determine the issue. As plaintiff makes no objection to the dismissal of the claims against CEC and the Newton County Correctional Center, and as these entities are the only remaining defendants after the severance of the claims against the individual defendants, this matter will be dismissed.

ORDER

For the reasons set forth above, the claims against Warden Dawson, Assistant Warden Stats, Captain Samuels, Dr. Moore, Nurse Hollaway and Nurse Wright are **SEVERED** from this action and shall proceed as a separate lawsuit. The resulting case should be assigned according to the regular practice for allotment of newly-filed civil actions. The report of the magistrate judge is **PARTIALLY ADOPTED** to the extent it recommends dismissal of the claims against CEC and the Newton County Correctional Center. A final judgment shall be entered dismissing this lawsuit.

SIGNED this the 12 day of September, 2013.



Thad Heartfield
United States District Judge